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competent, supported expert testimony to show operator's incompetence from lack of proper instruction.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 721.]

5. Appeal and Error (§ 1066*)—Harmless Error—Modification of Instruction.—In action against hotel company for death in elevator accident, insertion in each of plaintiff's instructions of word "constructed" or "construction," in telling jury degree of care required of defendant with respect to elevator, held harmless to defendant, though no negligence in construction was alleged.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 740.]

6. Carriers (§ 318 (1)*)—Presumption from Injury—Rebuttal.—Prima facie presumption of its negligence, which law raises against common carrier from accident of character not ordinarily occurring where due care is used, holds until carrier has introduced satisfactory evidence tending to rebut presumption.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 705.]

7. Trial (§ 253 (7)*)—Direction of Verdict—Partial Statement of Evidence.—Requested instruction, directing verdict for defendant on partial statement of evidence, was properly refused.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 737.]

Error to Circuit Court of City of Richmond.

Action by Cuddy's administrator against Murphy's Hotel, incorporated. To review judgment for plaintiff, defendant brings error. Affirmed.

C. V. Meredith, Jas. H. Price, and Gunn & Mathews, all of Richmond, for plaintiff in error.

Montague & Lamb and F. B. Hutton, of Abingdon, for defendant in error.

WASHINGTON & O. D. RY. *v.* WARNER.

Jan. 16, 1919.

[97 S. E. 799.]

1. Appeal and Error (§ 1002*)—Scope of Review—Findings of Fact.—Under the drastic demurrer to evidence rule, verdict of jury resolves conflict of evidence, and its finding is conclusive upon the court of review.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620; 17 Va.-W. Va. Enc. Dig. 69.]

2. Master and Servant (§ 278 (18)*)—Federal Employers' Liability Act—Negligence—Evidence.—In action under federal Employers'

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Liability Act (U. S. Comp. St. §§ 8657-8665) for injuries to street car motorman in head-on collision, evidence held to establish negligence of the employer in sending out, without warning, extra car 2 minutes ahead of plaintiff, instead of 10 as the rules required.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 725.]

3. Master and Servant (§ 150 (3)*)—Warning of Danger—Operation of Cars.—Declaration in action under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), alleging that train dispatcher negligently caused motorman to run his car into another car by ordering him to take his car out without telling him that only 2 minutes before, in violation of rule, another car had been sent out on the same track, stated good cause of action.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 718.]

4. Pleading (§ 317 (1)*)—Bill of Particulars.—Where a declaration states a good cause of action, and the defendant desires a more particular statement of the grounds of complaint, he should demand a bill of particulars under Code 1904, § 3249.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 376.]

5. Master and Servant (§ 260 (2)*)—Pleading—Requisites and Sufficiency.—Declaration under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), charging that servants of street railway in charge of extra car negligently collided with plaintiff's car, and inflicted on him injuries, did not allege such facts as would warrant court to say as a matter of law that plaintiff assumed the risk.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 718.]

6. Master and Servant (§ 288 (3)*)—Assumption of Risk—Evidence.—In action under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), for injuries to a motorman, whether he assumed the risk of a collision held for the jury.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 693.]

7. Witnesses (§ 340 (1)*)—Impeachment—Professional Standing.—In servant's personal injury action, it was not proper to attempt to impeach his physician as a witness by attack on professional standing and showing unethical conduct.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 969-70.]

8. Evidence (§ 474 (9)*)—Admissibility—Opinions.—In action under the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), for injuries in collision between street cars, objection to opinion of witness, who was familiar with plaintiff's car and its equipment, as to distance within which it could be stopped on ground that he had not run the car on the day of the accident affected weight of evidence, but not its competency.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 403.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

9. Evidence (§ 539½ (2)*)—Experts—Qualifications.—Street car motorman, with many years of experience, was qualified to speak as an expert as to whether it was possible for him to have stopped his car in time to have prevented a collision.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 777; 17 Va.-W. Va. Enc. Dig. 403.]

10. Appeal and Error (§ 1050 (1)*)—Harmless Error—Matters Already in Evidence.—Where plaintiff had already testified in detail to reasons why he could not stop his car to avoid collision, admission of his statement as to his opinion whether he could have stopped the car in time to prevent the accident was not prejudicial.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 582.]

11. Trial (§ 46 (2)*)—Reception of Evidence—Necessity of Showing Materiality.—Refusal to permit questions to be propounded to witnesses is not error, where it is not shown by avowal of counsel or otherwise that the answers sought to be elicited were material.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 586.]

12. Negligence (§ 141 (12)*)—Federal Employers' Liability Act—Effect of Contributory Negligence.—In action under federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), for injuries in collision to street car motorman, instruction that, if plaintiff was guilty of contributory negligence his damages should be diminished in proportion to the amount of negligence attributable to him was correct.

Error to Circuit Court, Alexandria County.

Action by Arthur C. Warner against the Washington & Old Dominion Railway. Judgment on verdict for plaintiff, and defendant brings error. Affirmed.

R. H. Yeatman and *W. J. Lambert*, both of Washington, D C., and *C. E. Nicol*, of Alexandria, for plaintiff in error.

Crandall Mackey, of Washington, D. C. for defendant in error.

SCOTT *v.* DOUGHTY.

Jan. 16, 1919.

[77 S. E. 802.]

1. Navigable Waters (§ 36 (3)*)—Title to Land—"Low-Water Mark."—The term "low-water mark," within Code 1904, § 1339, providing that title to land on bays, rivers, creeks, and shores of seas shall extend to "low-water mark," means ordinary low water, not

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